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4

5 UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF CALIFORNIA

6 Augusto RAMOS MENDOZA,

7 Petitioner,

Case No. 25-1170

8 v.

**EX-PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

9 Todd LYONS, Acting Director,
Immigration and Customs Enforcement; Sergio
10 ALBARRAN, Field Office Director of
Enforcement and Removal Operations, San
11 Francisco Field Office, Immigration and
Customs Enforcement; Kristi NOEM,
12 Secretary, U.S. Department of Homeland
Security; U.S. Department of Homeland
13 Security; Pamela BONDI, U.S. Attorney
General; Executive Office for Immigration
14 Review; Minga WOFFORD, Facility
Administrator of Mesa Verde ICE Processing
15 Center,

PETITIONER'S DHS NUMBER:



16 Respondents.
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NOTICE OF MOTION

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2 Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby
3 moves the Court for emergency relief in the form of a temporary restraining order directing
4 Respondents to immediately release Petitioner from custody.

5 Second, the Court should enjoin Respondents from imposing any additional restrictions
6 or conditions on Petitioner, including but not limited to electronic monitoring or home visits

7 Third, the Court should further enjoin and restrain Respondents from re-detaining
8 Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker to
9 evaluate whether Petitioner's re-detention is warranted based on flight risk or a danger to the
10 community.

11 Finally, the Court should enjoin Respondents from removing Petitioner from this District
12 or, at least, removing Petitioner from the United States via a third-country deportation without
13 providing him and his counsel meaningful notice and opportunity to assert a fear-based claim:

14 (1) a minimum of ten (10) days to raise a fear-based claim for protection prior to removal; (2) if
15 Petitioner demonstrates reasonable fear of removal to the third country, Respondents must move
16 to reopen Petitioner's removal proceedings; (3) if Petitioner is not found to have demonstrated a
17 reasonable fear of removal to the third country, Respondents must provide a meaningful
18 opportunity, and a minimum of fifteen (15) days for Petitioner to seek reopening of his
19 immigration proceedings.

20 Petitioner further moves for the issuance of an order to show cause as to why a
21 preliminary injunction should not issue.
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1 This application is supported by the Memorandum of Points and Authorities,
2 accompanying exhibits, as well as any additional submissions that may be considered by the
3 Court.

4 DATED this 26th Day of November, 2025.

/s/ Arash Yasrebi
Attorney for Petitioner

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PROOF OF SERVICE

I, the undersigned, declare that my office is in San Francisco, California. I am over the age of eighteen (18) years and not a party to the action within. My business address is One Sansome Street, Suite 3500, San Francisco, CA 94104. On November 26, 2025, I served the following documents: EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER by placing a true and correct copy in a sealed envelope, each addressed as follows:

Kristi Noem
U.S. Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

Todd Lyons
U.S. Immigration and Customs Enforcement is:
500 12th Street SW
Washington, DC 20536

Sergio Albarran
San Francisco Field Office
U.S. Immigration and Customs Enforcement
630 Sansome Street
Rm 590
San Francisco, CA 94111

Minga Wofford
Mesa Verde ICE Processing Facility
425 Golden State Ave
Bakersfield, CA 93301

Pamela Bondi
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

United States Attorney's Office
501 I Street
Suite 10-100
Sacramento, CA 95814

By mail. I am readily familiar with the business for collection and processing of correspondence for mailing in the United States Postal Service and that this document, with

1 postage fully prepaid, will be deposited with the United States Postal Service this date in the
2 ordinary course of business.

3 I declare under the penalty of perjury that the foregoing is true and correct. Executed on
4 November 26, 2025, at San Francisco, California.

5 /s/ Arash Yasrebi
6 Arash Yasrebi
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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT COURT OF CALIFORNIA

6 Augusto RAMOS MENDOZA,

7 Petitioner,

8 v.

9 Todd LYONS, Acting Director,
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10 ALBARRAN, Field Office Director of
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11 Francisco Field Office, Immigration and
Customs Enforcement; Kristi NOEM,
12 Secretary, U.S. Department of Homeland
Security; U.S. Department of Homeland
13 Security; Pamela BONDI, U.S. Attorney
General; Executive Office for Immigration
14 Review; Minga WOFFORD, Facility
Administrator of Mesa Verde ICE Processing
15 Center,

16 Respondents.

Case No. 25-1170

**POINTS AND AUTHORITIES IN
SUPPORT OF EX-PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION**

PETITIONER'S DHS NUMBER:



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1 **I. INTRODUCTION**

2 Petitioner Augusto Ramos Mendoza RAMOS MENDOZA, (“Petitioner” or “Mr. Mendoza”)
3 seeks a Temporary Restraining Order that requires Respondents to immediately release him from
4 upon the issuance of a TRO and preliminary injunction.

5 Petitioner entered the United States without inspection on or about February 8,
6 2011, near the United States–Mexico border. He filed an affirmative asylum application with the
7 asylum office, and after his interview, the asylum office referred his case to the Immigration
8 Court.

9 On October 24, 2012, the Immigration Judge granted Petitioner’s application for
10 withholding of removal. On November 20, 2012, ICE issued an order of supervision and released
11 Petitioner under that order. After his release, Petitioner complied with every condition of
12 supervision, including periodic check-ins with ICE. No facts indicate that Petitioner now
13 presents a flight risk or danger to the community.

14 Implicit in this decision was a finding that Mr. Mendoza was nonviolent and would remain so
15 if released, that he was not likely to pose a threat to the community if released, that he was not
16 likely to violate the conditions of his release, and that he did not pose a flight risk. *See* 8 C.F.R. §
17 241.4(d)(l) (permitting the release of a noncitizen “if the [noncitizen] demonstrates to the
18 satisfaction of the Attorney General or her designee that his or her release will not pose a danger
19 to the community or to the safety of other persons or to property or a significant risk of flight
20 pending such [noncitizen]’s removal from the United States.”); 8 C.F.R. § 241.4(e) (listing the
21 criteria for release as including a determination that the noncitizen “is not likely to pose a threat
22 to the community following release” and “does not pose a significant risk of flight if released”).

1 The Order of Supervision required Petitioner to maintain contact with an assigned ICE
2 official and report in person when requested, appear for medical or psychiatric examination at
3 the expense of the government, not commit any crimes, not travel outside of Pennsylvania for
4 more than forty-eight hours without first notifying the government, and complete an application
5 for any travel documents that ICE requested.

6 Once a noncitizen subject to an Order of Removal has been released from detention under an
7 Order of Supervision, there are detailed regulations concerning when and how that Order of
8 Supervision may be revoked. *See* 8 C.F.R. § 241.4(l).

9 An Order of Supervision may be revoked if any of these conditions is violated. *See* 8 C.F.R.
10 § 241.4(l)(1); § 241.4(l)(2)(ii).

11 Additionally, an Order of Supervision may be revoked when it is appropriate to enforce a
12 removal order or when “[t]he conduct of the alien, or any other circumstance, indicates that
13 release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2)(iii), § 241.4(l)(2)(iv). Two
14 government officials have the authority to revoke an Order of Supervision: the Executive
15 Associate Director of ICE or a district director of ICE if the “circumstances do not reasonably
16 permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2).

17 When an Order of Supervision is revoked, the noncitizen must “be notified of the reasons for
18 revocation of his or her release” and must be afforded a prompt “initial informal interview” to
19 allow the noncitizen an opportunity to respond to and contest the reasons for revocation. 8 C.F.R.
20 § 241.4(l)(1).

21 Respondents’ actions violate the Due Process Clause of the Fifth Amendment to the U.S.
22 Constitution, the Immigration and Nationality Act and implementing regulations, the
23 Administrative Procedure Act, and the *Accardi* doctrine, which obligates administrative agencies
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1 to follow their own rules, procedures, and instructions. Petitioner brings this action for
2 injunctive, habeas, and declaratory relief ordering Respondents to release her.

3 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

4 Petitioner is a forty-year-old native and citizen of Guatemala. He entered the
5 United States approximately fourteen years ago and has resided continuously in the United States
6 since that time.

7 Petitioner entered the United States without inspection on or about February 8,
8 2011, near the United States–Mexico border. He filed an affirmative asylum application with the
9 asylum office, and after his interview, the asylum office referred his case to the Immigration
10 Court.

11 On October 24, 2012, the Immigration Judge granted Petitioner’s application for
12 withholding of removal. On November 20, 2012, ICE issued an order of supervision and released
13 Petitioner under that order. After his release, Petitioner complied with every condition of
14 supervision, including periodic check-ins with ICE. No facts indicate that Petitioner now
15 presents a flight risk or danger to the community.

16 On November 24, 2025, Petitioner traveled on a domestic flight. ICE officers
17 arrested him at the airport despite his valid and active order of supervision.

18 ICE transferred Petitioner to the Mesa Verde ICE Processing Facility, where he
19 remains detained.

20 Upon information and belief, ICE has never informed Petitioner that it revoked his
21 order of supervision, nor has ICE provided any reasons or allowed him an opportunity to
22 respond.

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24

1 **III. LEGAL ARGUMENT**

2 The requirements for granting a Temporary Restraining Order are “substantially identical” to
3 those for granting a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,
4 240 F.3d 832, 839 n.7 (9th Cir. 2001).

5 Petitioner must demonstrate that (1) he is likely to succeed on the merits of their claims; (2)
6 he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of
7 equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def.*
8 *Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an injunction should be
9 issued when there is a stronger showing on the balance of hardships, even if there are “serious
10 questions on the merits ... so long as the plaintiff also shows a likelihood of irreparable harm and
11 that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
12 1135 (9th Cir. 2011); *see also Flathead- Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th
13 1180, 1190 (9th Cir. 2024). Petitioner satisfies the criteria and a TRO should be granted.

14 **A. Petitioner Is Likely to Succeed on the Merits of His Claims.**

15 Petitioner is likely to succeed on his claims that his ongoing detention by Respondents is
16 unlawful.

17 **1. The Statute and Regulation Govern Procedures for Revoking an Order of**
18 **Supervision**

19 A non-citizen with a final order of removal “who is not removed within the
20 [90-day] removal period . . . shall be subject to [an order of] supervision under regulations
21 prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day
22 period”).

23 A non-citizen may only be detained past the 90-day removal period following a
24 removal order if found to be “a risk to the community or unlikely to comply with the order of

1 removal” or if the order of removal was on specified grounds. 8 U.S.C. § 1231(a)(6).

2 But even where initial detention past the 90-day removal period is authorized, if
3 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable
4 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and
5 should be conditioned on any of the various forms of supervised release that are appropriate in
6 the circumstances...” *Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001).

7 Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),
8 that an order of supervision may be revoked and a non-citizen may be re-detained past the
9 removal period: “(1) the purposes of release have been served; (2) the alien violates any
10 condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the
11 alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R.
12 § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a
13 non-citizen “violates any of the conditions of release”). Because “[r]egulations cannot
14 circumvent the plain text of the statute[.]” courts question whether these regulations are ultra
15 vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018)
16 (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal
17 period only if person is a risk to the community, unlikely to comply with the order of removal, or
18 was ordered removed on specified grounds).

19 It is clear, however, that regulations permit only certain officials to revoke an order of
20 supervision: the ICE Executive Associate Director, a field office director, or an official
21 “delegated the function or authority . . . for a particular geographic district, region, or area.”
22 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,
23 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles

1 listed in § 241.4). If the field office director or a delegated official intends to revoke an order of
2 supervision, they must first make findings that “revocation is in the public interest and
3 circumstances do not reasonably permit referral of the case to the Executive Associate
4 [Director].” 8 C.F.R. § 241.4(1)(2). And for a delegated official to have authority to revoke an
5 order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781
6 F. Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under
7 part 241 that do not include the power to revoke release” insufficient to grant authority to revoke
8 an order of supervision).

9 Upon revocation of an order of supervision, ICE must give a non-citizen notice of
10 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(1)(1).

11 In this case, Petitioner’s rights were violated in connection with the purported revocation
12 of his Order of Supervision and his rights have been violated in connection with his right to
13 challenge the revocation.

14 The government violated his due process rights by purporting to revoke his Order of
15 Supervision without complying with the regulations governing such revocations. Once
16 Petitioner was released from detention on an Order of Supervision, the revocation of that release
17 was subject to the provisions of 8 C.F.R. § 241.4(1)(2).

18 There is no evidence that the government ever revoked Petitioner’s Order of Supervision.
19 There is also no evidence that it has been legally revoked for a permissible reason by an order
20 signed by the Executive Associate Director of ICE, someone to whom the Executive. Associate
21 Director has legally delegated authority, or a district director who has made specific findings that
22 the circumstances “do not reasonably permit referral of the case to the Executive Associate
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1 [Director].” 8 C.F.R. § 241.4(1)(2). Petitioner was arrested and re-detained in violation the
2 statutes and regulations that govern the revocation of a lawful Order of Supervision.

3 Furthermore, the government violated Petitioner’s due process rights by failing to comply
4 with the requirements of 8 C.F.R. § 241.4(1)(1).

5 8 C.F.R. § 241.4(1)(1) states:

6 (l) Revocation of release —
7 (1) Violation of conditions of release. Any alien described in paragraph (a) or
8 (b)(1) of this section who has been released under an order of supervision or other
9 conditions of release who violates the conditions of release may be returned to
10 custody. Any such alien who violates the conditions of an order of supervision is
11 subject to the penalties described in section 243(b) of the Act. Upon revocation,
12 the alien will be notified of the reasons for revocation of his or her release or
13 parole. The alien will be afforded an initial informal interview promptly after his
14 or her return to Service custody to afford the alien an opportunity to respond to
15 the reasons for revocation stated in the notification.

16 8 C.F.R. § 241.4(1)(1). Petitioner has never been provided with a notification of the
17 revocation of his Order of Supervision, has never been advised of the reasons for the
18 purported revocation, and has never been provided with the informal interview
19 required by § 241.4(l)(1).

20 Courts have held that the government’s failure to follow its own immigration
21 regulations may warrant the release of a detained noncitizen. *See Ceesay v. Kurzdorfer*,
22 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389
23 (D. Mass. 2017); and *Guillermo MR. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL
24 1983677 (N.D. Cal. July 17, 2025).

2. The APA Sets Minimum Standards for Final Agency Action

25 The Administrative Procedure Act authorizes judicial review of final agency
26 action. 5 U.S.C. § 704. Final agency actions are those (1) that “mark the consummation of the
27 agency’ decision making process” and (2) “by which rights or obligations have been determined,
28

1 or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997)
2 (citation modified).

3 ICE’s revocation of an order of supervision is a final agency action subject to this
4 Court’s review. The revocation here marked the consummation of ICE’s decision-making
5 process regarding Petitioner’s custody. The revocation was also an action by which rights or
6 obligations have been determined or from which legal consequences flowed because it led ICE to
7 detain Petitioner in violation of his rights under the Constitution, statute, and regulation.

8 **3. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

9 Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must
10 follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v.*
11 *Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of
12 Immigration Appeals failed to follow procedures governing deportation proceedings); *see also*
13 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is
14 incumbent upon agencies to follow their own procedures . . . even where the internal procedures
15 are possibly more rigorous than otherwise would be required.”).

16 *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v.*
17 *INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of
18 unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (1974)
19 (affirming reversal of agency denial of public assistance made in violation of internal agency
20 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to
21 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

22 Where a release notification issued alongside an order of supervision instructs that
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1 a non-citizen with a final order of removal will be given an opportunity to prepare for an
2 “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v.*
3 *Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29,
4 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d
5 Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of
6 petitioners to give an opportunity to prepare for orderly departure).

7 Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that
8 violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v.*
9 *Shaughnessy*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow
10 its rules in a hearing] he should receive a new hearing”).

11 Respondents violated agency regulations governing who and upon what findings it
12 may properly revoke an order of supervision when it revoked Petitioner’s order. “As a result, this
13 Court cannot conclude that [the revoking officer] had the authority to revoke release” and
14 Petitioner “is entitled to release on that basis alone.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137,
15 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025
16 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21,
17 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered
18 by someone without regulatory authority to do so).

19 **4. Petitioner’s re-detention violates due process because his removal from the United**
20 **States is not reasonably likely to occur in the foreseeable future.**

21 Respondents’ revocation of Petitioner’s order of supervision was contrary to the agency’s
22 constitutional power under the Fifth Amendment’s Due Process Clause.

23 Under *Zadvydas v. Davis*, 533 U.S. 678, 701, courts typically presume that six months of
24 post-removal order detention is reasonable, after which a non-citizen can bring a habeas petition

1 to seek release, showing “good reason to believe” there is no significant likelihood of removal.
2 But some recent cases, including *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2,
3 2025), have held that when a non-citizen released pursuant to an Order of Supervision is re-
4 detained for the purposes of removal, the government immediately bears the burden to show a
5 substantial likelihood of removal in the now foreseeable future. *See also Roble v. Bondi*, No. 25-
6 CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (applying the “default
7 rule” that the burden falls on the party who generally seeks to change the present state of affairs
8 and that is ICE that seeks to change the present state of affairs by revocation of an Order of
9 Supervision).

10 In *Escalante*, the court characterized an Order of Supervision revocation as “not your typical
11 first round detainment of an alien awaiting removal. Petitioner was previously detained, then
12 released on supervised release for several years, and his 90-day removal period expired.”
13 *Escalante v. Noem*, 2025 WL 2206113, at *3. The court then examined post-removal period
14 regulations that “clearly indicate, upon revocation of supervised release, it is the [government’s]
15 burden to show a significant likelihood that the alien may be removed.” *Id.* The Court explained
16 that the plain language of the regulations shows the government bears the burden, emphasizing
17 that 8 C.F.R. § 241.13(i)(2) refers to if “the Service determines that there is a significant
18 likelihood that the alien may be removed in the reasonably foreseeable future” and § 241.4(b)(4)
19 likewise states “if the Service subsequently determines” *Escalante v. Noem*, 2025 WL
20 2206113, at *3 (emphasis in original). Ultimately, the *Escalante* court reasoned that “[i]mposing
21 the burden of proof on the alien each time he is re-detained would lead to an unjust result and
22 serious due process implications.” *Escalante v. Noem*, 2025 WL 2206113, at *3.

1 In this case, the government must show a substantial likelihood of removing Petitioner in
2 the now foreseeable future because they bear the burden of proof.

3 **5. Respondents’ revocation of Petitioner’s Order of Supervision violates due process.**

4 “The Due Process Clause applies to all persons within the United States, including aliens,
5 whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*,
6 533 U.S. 678, 693 (2001) (citation modified). “Freedom from imprisonment—from government
7 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause
8 protects.” *Id.* at 690 (2001).

9 Under substantive due process doctrine, a restraint on liberty like revocation of a non-
10 citizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive objective.”
11 *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two
12 legitimate objectives of immigration detention: preventing danger to the community or
13 preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing
14 constitutional limitations on civil detention).

15 “Procedural due process imposes constraints on governmental decisions which
16 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.
17 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental
18 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and
19 in a meaningful manner.” *Id.* at 333 (citation modified).

20 In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court established the
21 framework for determining the specific procedural protections required by the Due Process
22 Clause of the Fifth Amendment. The Court articulated a three-factor balancing test that requires
23 consideration of:
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1 First, the private interest that will be affected by the official action; second, the
2 risk of an erroneous deprivation of such interest through the procedures used, and
3 the probable value, if any, of additional or substitute procedural safeguards; and
4 finally, the Government's interest, including the function involved and the fiscal
5 and administrative burdens that the additional or substitute procedural
6 requirement would entail.

7 First, Petitioner has a liberty interest in his continued release on his Order of
8 Supervision. He has been free on that order since 2012. He has complied with all of the terms of
9 her Order of Supervision. Therefore, Petitioner has a liberty interest in his continued release that
10 may not be removed without due process.

11 Second, the risk of an erroneous deprivation of Petitioner's rights is substantial. The
12 regulations promulgated by the government are designed to ensure that noncitizens who have
13 been released under supervision are not subjected to arbitrary re-detention. These regulations
14 require the government to provide notice of its intent to revoke supervision, a statement of the
15 reasons for the proposed revocation, and an opportunity for the individual to contest those
16 reasons. There is no indication that the government complied with these procedural safeguards
17 before re-detaining Petitioner.

18 Third, the burden imposed on the government does not outweigh Petitioner's interests. In
19 this case, those governmental interests would not be impaired by requiring the government to
20 comply with its own regulations when determining whether to revoke Mr. Mendoza's
21 supervision and re-detain him. As previously discussed, the government has no legitimate
22 interest in disregarding the procedures it has established to ensure that the discretion granted to
23 its officials is exercised in a fair and non-arbitrary manner.
24

1 **6. The Regulations permitting Order of Supervision revocation absent findings of**
2 **flight risk or danger to the community are *ultra vires*.**

3 Under 8 U.S.C. § 1231(a), the government is barred from re-detaining a noncitizen subject to
4 an Order of Supervision unless it finds that the individual poses a danger to the community or is
5 unlikely to comply with an order of removal. *You v. Nielsen*, 321 F. Supp. 3d 451 (S.D.N.Y.
6 2018).

7 In *You v. Nielsen*, the court held that the provisions of 8 C.F.R. § 241.4(l) purporting to
8 authorize the revocation of release impermissibly exceed the scope of detention authority granted
9 under 8 U.S.C. § 1231(a). *Id.* at 463. The court further determined that an individual with a final
10 order of removal who is re-detained pending removal is entitled to notice and an informal
11 interview under 8 C.F.R. § 241.4(l), and that 8 U.S.C. § 1231(a) prohibits re-detention absent
12 findings that the individual presents a flight risk or a danger to the community. *Id.*

13 Therefore, a revocation of an Order of Supervision based solely on the reasons listed in 8
14 C.F.R. § 241.4(l), without findings of dangerousness or risk of flight, constitutes *ultra vires*
15 agency action. An individual such as Petitioner, who has been released from detention, has
16 complied with all conditions of supervision, and is not inadmissible or removable on the grounds
17 specified in § 1231, may not lawfully be re-detained without a finding that he poses a danger to
18 the community or a risk of flight, even where his removal may be imminent.

19 **7. Petitioner Has Expressed a Fear of Removal to Third Countries, Including El**
20 **Salvador**

21 Upon information and belief, it appears Respondents are preparing to remove Petitioner to a
22 third country without providing a meaningful opportunity to be heard on his fear-based claims.
23 Petitioner would move to re-open his immigration case and apply for fear-based protection and
24 withholding of removal to certain third countries. Petitioner has expressed a fear of removal to

1 El Salvador. Respondents have not yet provided any meaningful notice. Nevertheless, it is
2 obvious that Petitioner's protected status could subject him to persecution and torture in any
3 number of third countries. *See, e.g., D.V.D. v. U.S. Dept. of Homeland Sec.*, 778 F. Supp. 3d 355,
4 388 (D. Mass. 2025).

5 The United States Department of State issues Country Reports on Human Rights Practices
6 for various countries. These Country Reports could illustrate part of the basis for Petitioner's
7 hypothetical fear-based protection claims. If Respondents provide notice of a particular third
8 country they seek to remove Petitioner to, Petitioner's counsel will evaluate and supplement the
9 record with Petitioner's basis for a fear-based claim if applicable.

10 Further, based on the statements and actions of countries that have recently accepted third
11 country removals from the United States, Petitioner. would likely succeed on the claim that these
12 countries would repatriate him to El Salvador or another third country where he would face
13 torture and/or persecution, in violation of U.S. and international refugee law.

14 It is black letter law that Mr. Mendoza must be provided with a meaningful opportunity to
15 apply for protection prior to removal to a third country. The Ninth Circuit held that "[f]ailing to
16 notify individuals who are subject to deportation that they have the right to apply for asylum in
17 the United States and for withholding of deportation to the country to which they will be
18 deported violates both INS regulations and the constitutional right to due process." *Andriasian v.*
19 *INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative
20 country without meaningful opportunity to apply for protection "violate[s] a basic tenet of
21 constitutional due process"). *See also Najjar v. Lynch*, 630 Fed. App'x 724 (9th Cir. 2016). ("In
22 the context of country of removal designations, last minute orders of removal to a country may
23 violate due process if an immigrant was not provided an opportunity to address his fear of
24

1 persecution in that country.”) In practice, the “guarantee of due process includes the right to a
2 full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her
3 particular claim.” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the
4 same for non-citizen petitioner and holding ICE “has an affirmative obligation to make a
5 determination regarding a noncitizen’s claim of fear before deporting” them). This is because
6 “third-country removals are subject to the same mandatory protections that exist in removal or
7 withholding-only proceedings.” *Vaskanyan v. Janecka, et al.*, 2025 WL 2014208, *6 (C.D.
8 California 2025) (citing *D.V.D.*, 778 F.Supp.3d).

9 **B. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.**

10 In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents.
11 “Freedom from imprisonment—from government custody, detention, or other forms of
12 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*
13 *v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes “a loss of liberty that is . . .
14 irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020)
15 (*Moreno II*), aff’d in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez*
16 *v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It “is well established that the deprivation of
17 constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
18 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-
19 02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (“Thus,
20 it follows inexorably from our conclusion that the government’s current policies [which fail to
21 consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that
22 members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally
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24

1 in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable
2 harm.”).

3 As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a
4 detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it
5 enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for*
6 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
7 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to
8 immigration detention” including “subpar medical and psychiatric care in ICE detention
9 facilities, the economic burdens imposed on detainees and their families as a result of detention,
10 and the collateral harms to children of detainees whose parents are detained.” *Hernandez v.*
11 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented
12 alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General
13 (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-
14 2023 (2024) (reporting violations of environmental health and safety standards; staffing
15 shortages affecting the level of care detainees received for suicide watch, and detainees being
16 held in administrative segregation in unauthorized restraints, without being allowed time outside
17 their cell, and with no documentation that they were provided health care or three meals a day).

18 Here, Petitioner’s continued detention under the current conditions presents a serious and
19 immediate threat to his physical and mental health. During the time that he has been on an Order
20 of Supervision, Petitioner has worked hard to establish a stable life for himself and his family.

21 Petitioner’s re-arrest absent a hearing before a neutral adjudicator would violate his due
22 process rights under the Constitution. It is clear that “the deprivation of constitutional rights
23 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
24

1 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining
2 order is necessary to prevent Mr. Mendoza from suffering irreparable harm by being subject to
3 unlawful and unjust detention.

4 Respondents appear likely to imminently remove Petitioner to a third country without
5 providing Petitioner mandatory statutory and constitutional protections.

6 As the *D.V.D.* District Court explained, the irreparable harm resulting from third country
7 removal without sufficient opportunity to apply for fear-based protection “is clear and simple:
8 persecution, torture, and death. It is hard to imagine harm more irreparable.” *D.V.D.*, 778
9 F.Supp.3d at 391

10 **C. The Balance of Equities Tips in Petitioner’s Favor and a TRO is in the Public**
11 **Interest.**

12 Because the government is a party, these two factors are considered together. *Nken v. Holder*,
13 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in his
14 favor because his claims assert that the new policy has violated federal regulations and laws. *See*
15 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the government’s
16 actions resulting in Petitioner being unlawfully “is inconsistent with federal law, ...the balance
17 of hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno*
18 *Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also*
19 *Moreno Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent
20 injunction issued in *Moreno II* and quoting approvingly district judge’s declaration
21 that “it is clear that neither equity nor the public’s interest are furthered by allowing violations of
22 federal law to continue”). This is because “it would not be equitable or in the public’s interest to
23 allow the [government] . . . to violate the requirements of federal law, especially when there are
24 no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.

1 2013) (second alteration in original) (citation omitted). Indeed, Respondents “cannot suffer harm
2 from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d
3 1127, 1145 (9th Cir. 2013).

4 **IV. CONCLUSION**

5 For the foregoing reasons, Petitioner respectfully request that the Court grant the motion for a
6 temporary restraining order.

7 DATED this 26th Day of November, 2025.

/s/ Arash Yasrebi
Attorney for Petitioner

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains
5,456 words.

/s/ Arash Yasrebi
Arash Yasrebi

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PROOF OF SERVICE

1
2 I, the undersigned, declare that my office is in San Francisco, California. I am over the
3 age of eighteen (18) years and not a party to the action within. My business address is One
4 Sansome Street, Suite 3500, San Francisco, CA 94104. On October 22, 2025, I served the
5 following documents: POINTS AND AUTHORITIES IN SUPPORT OF EX-PARTE MOTION
6 FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY
7 INJUNCTION by placing a true and correct copy in a sealed envelope, each addressed as
8 follows:

9 Kristi Noem
U.S. Department of Homeland Security
10 2801 Nebraska Avenue NW
Washington, D.C. 20528

11 Todd Lyons
12 U.S. Immigration and Customs Enforcement is:
500 12th Street SW
13 Washington, DC 20536

14 Sergio Albarran
San Francisco Field Office
15 U.S. Immigration and Customs Enforcement
630 Sansome Street
16 Rm 590
San Francisco, CA 94111

17 Minga Wofford
18 Mesa Verde ICE Processing Facility
425 Golden State Ave
19 Bakersfield, CA 93301

20 Pamela Bondi
950 Pennsylvania Avenue, NW
21 Washington, DC 20530-0001

22 United States Attorney's Office
501 I Street
23 Suite 10-100
Sacramento, CA 95814
24

1 Arash Yasrebi
Yasrebi Law
2 One Sansome Street, Suite 3500
San Francisco, CA 94104
3 Tel: (415) 819-1898
Email: arash@yasrebilaw.com

4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT COURT OF CALIFORNIA

6 Augusto RAMOS MENDOZA,

7 Petitioner,

8 v.

9 Todd LYONS, Acting Director,
Immigration and Customs Enforcement; Sergio
10 ALBARRAN, Field Office Director of
Enforcement and Removal Operations, San
11 Francisco Field Office, Immigration and
Customs Enforcement; Kristi NOEM,
12 Secretary, U.S. Department of Homeland
Security; U.S. Department of Homeland
13 Security; Pamela BONDI, U.S. Attorney
General; Executive Office for Immigration
14 Review; Minga WOFFORD, Facility
Administrator of Mesa Verde ICE Processing
15 Center,

16 Respondents.

Case No. 25-1170

**[PROPOSED] ORDER
GRANTING PETITIONER'S
EX-PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

PETITIONER'S DHS NUMBER:



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1 Good cause having been shown, this Court ORDERS that Respondents may not re-
2 incarcerate Petitioner and must release Petitioner from their custody immediately.

3 Respondents are enjoined from imposing any additional conditions or restrictions on
4 Petitioner, including, but not limited to, electronic monitoring or home visits.

5 In addition, Respondents are enjoined and refrained from re-detaining Petitioner absent
6 prior notice and a pre-deprivation hearing before an Immigration Judge to determine whether any
7 renewed detention is warranted based on flight risk or danger to the community.

8 Respondents are also enjoined from relocating Petitioner outside of the Eastern District of
9 California pending final resolution of this case.

10 Respondents are enjoined from removing Petitioner from this District or, at least,
11 removing Petitioner from the United States via a third-country deportation without providing him
12 and his counsel meaningful notice and opportunity to assert a fear-based claim: (1) a minimum
13 of ten (10) days to raise a fear-based claim for protection prior to removal; (2) if Petitioner
14 demonstrates reasonable fear of removal to the third country, Respondents must move to reopen
15 Petitioner's removal proceedings; (3) if Petitioner is not found to have demonstrated a reasonable
16 fear of removal to the third country, Respondents must provide a meaningful opportunity, and a
17 minimum of fifteen (15) days for Petitioner to seek reopening of his immigration proceedings.

18
19
20 Date:

United States District Judge

EXHIBITS LIST

1. Petitioner’s Order of Supervision.....1-3

2. Petitioner’s asylum referral notice.....4-5

3. Petitioner’s Notice to Appear.....6

4. Date Petitioner was granted withholding of removal by the Immigration Judge.....7

5. Petitioner’s employment authorization approval notice and card.....8-9

6. Declaration of Arash Yasrebi.....10-11

DEPARTMENT OF HOMELAND SECURITY
 U.S. Immigration and Customs Enforcement
 ORDER OF SUPERVISION (Continuation Page)

HOW

Alien's Name RAMOS-Mendoza, Agosto	Picture	Right Index Print
File Number		
Date November 20, 2012		
Alien's Signature		
Alien's Telephone Number (if applicable) 		
Alien's Address 		

PERSONAL REPORT RECORD		
Date	Officer	Comment/Changes
02/13/2013	D96	O/S
8/14/13	07675	RPT O/S
2/12/14	D96	O/S
8/13/14	SAA3	O/S
2-11-15	822	O/S
8-12-15	SAA3	O/S
2/10/16	D-45	RPT O/S
02/08/17	VA 7849	RPT O/S
2-9-2018	D87	O/S
2/8/19	WAD5	RPT O/S W/H
02/06/2020	GN 9842	RPT O/S W/H
02/04/2021		
02-11-2021		
3/14/2022	7379 CC	O/S
3/14/2023	JM 750	03/17/2023. Next report 03/15/2024 at 7:00 am
03/15/2024	11965	RIP, NRD.
03.14.2025	10057	RIP O/S
03-17-2025		
Signature		Title AFOD



UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
Immigration and Customs Enforcement

File Number



Date October 29, 2012

Agusto RAMOS-Mendoza



Please come to the office shown below at the time and place indicated in connection with an official matter.

OFFICE LOCATION	630 Sansome Street San Francisco, California 94111	Room No. 548	Floor No. 5 th
DATE AND HOUR	November 20, 2012 - Tuesday at 9:30 a.m.		
ASK FOR	Deportation Officer		
REASON FOR APPOINTMENT	Interview <i>Officer Skaggs</i> ⁴¹⁵ 844-5535		
BRING WITH YOU	This letter and all your documents regarding your immigration status. Also, bring your <u>PASSPORT</u> and <u>LD</u> .		

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.
If you are unable to do so, state your reason, sign below and return this letter to this office at once.

Cc: Nancy Powell

I am unable to keep the appointment because:

SIGNATURE

DATE

Very truly yours,

Craig S. Meyer
Assistant Field Office Director

8:13

98

 **Court Decision and Motion Information**

The immigration judge ordered **REMOVAL**.

DECISION DATE

October 24, 2012

COURT ADDRESS

100 MONTGOMERY ST., SUITE
800
SAN FRANCISCO, CA 94104

 **BIA Case Information**

No appeal was received for this case.

 **Court Contact**

acis.eqlr.justice.gov — Private

DECLARATION OF ARASH YASREBI

I, Arash Yasrebi, hereby declare as follows:

1. I am the managing attorney at Yasrebi Law, which is located at One Sansome Street, Suite 3500, San Francisco, CA 94104. I have personal knowledge of the matters stated herein because I am Petitioner Augusto Ramos Mendoza's attorney in the instant matter.
2. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, I make this declaration detailing efforts to effect notice of Petitioner's Ex-Parte Motion for a Temporary Restraining Order.
3. On November 26, 2025, I emailed Cheri Buxbaum, Paralegal Specialist at the United States Attorney's Office for the Eastern District of California, to inform her that we planned to file a Petition for Writ of Habeas Corpus and a Motion for a Temporary Restraining Order (TRO) requesting that the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) to secure the immediate release of Mr. Mendoza. I also asked whether the government complied with the Order of Supervision revocation regulation pursuant to 8 C.F.R. § 241.4(l) and whether they intend to remove Mr. Mendoza to a third country, including El Salvador.
4. Finally, I requested the opportunity to discuss the possibility of stipulating to a TRO or other possibilities for avoiding a TRO hearing.
5. On November 26, 2025, I sent copies of the Petition for Writ of Habeas Corpus and Motion for TRO by electronic mail to Ms. Buxbaum (Cheri.Buxbaum@usdoj.gov) and the U.S. Attorney 2241 unit (USACAE.ECF2241@usa.doj.gov).

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this 26th day of November 2025 at San Francisco, California.

/s/ Arash Yasrebi
Arash Yasrebi